

1 DAUFUSKIE ISLAND UTILITY COMPANY, INC.

2 DOCKET NO. 2018-364-W/S

3 Testimony of Michael J. Guastella

4 Before the South Carolina

5 Public Service Commission

6 Testimony Prepared: February 6, 2019

7 Hearing Date: February 28, 2019

8

9 **Q. Please state your name, business address, employer and title.**

10 A. Michael J. Guastella, 725 North Highway A1A, Suite B103, Jupiter, Florida 33477.

11 I am employed by Guastella Associates, Inc. ("GA") and my job title is Vice
12 President of Operations.

13 **Q. Will you briefly describe GA?**

14 A. Yes. Guastella Associates provides utility rate, valuation and management
15 consulting services.

16 **Q. What are your job duties?**

17 A. I am responsible for overseeing operations and management of Daufuskie Island
18 Utility Co., Inc. ("DIUC").

19 **Q. How long have you been working with DIUC?**

20 A. I began working with DIUC in 2010, and have continued to do so since that time.

21 **Q. How have you organized your testimony?**

22 A. My testimony is in the customary question and answer format. I have also
23 assembled and hereby provide the Commission with exhibits as follows:

- 1 • Exhibit MJG-1 Oblique Aerial Photo
- 2 • Exhibit MJG-2 Letter from Josey to Guastella, November 10, 2015
- 3 • Exhibit MJG-3 Labelled Map of Driftwood Cottage Lane

4 Also, it is my intent that these exhibits be incorporated into my testimony so that I
5 may rely upon them, where appropriate, as if fully set forth herein. My testimony
6 also cites to documents on file with the Commission in this docket. Pursuant to
7 S.C. Reg. § 103-847, I have not produced additional copies of those documents as
8 exhibits to my testimony.

9 **Q. Have you reviewed the Complaint and testimony of the Complainants**
10 **submitted in this matter?**

11 A. Yes. I have reviewed the Complaint as well as the prefiled direct testimonies of
12 Michael Halwig, Nancy Halwig, and Beverly Noller. Each of the three
13 Complainants (Halwig, Halwig, and Noller) provided the identical testimony
14 consisting of three (3) pages each.

15 **Q. The Complaint states: “DIUC forced the Halwigs and Nollers to install**
16 **replacement water and sewer mains for all lots on Driftwood Cottage Lane**
17 **since they were destroyed by Hurricane Matthew.” How do you respond to**
18 **that?**

19 A. First, it is important to understand the geography of the area at issue. The
20 Complaint implies by stating “all lots on Driftwood Cottage Lane” that there are
21 other affected residents on Driftwood Cottage Lane. That is not true. Of the four
22 homes impacted, two have already been abandoned and they appear to be falling
23 into the sea. Only the Complainants’ homes remain. The photos attached to our

1 Answer show the area at issue. Second, the water and sewer infrastructure was not
2 the only thing destroyed by Hurricane Matthew. After the hurricane there was no
3 Driftwood Cottage Lane to access the Complainants' homes. The road washed into
4 the sea. And this was, in fact, the second time Driftwood Cottage Lane was
5 destroyed by erosion.

6 **Q. What is the area like now?**

7 A. As shown in the photos submitted with DIUC's Answer, there are four houses on
8 Driftwood Cottage Lane (DCL, for short). Two houses have been abandoned.

9 **Q. Have you attempted to obtain a photograph of what the area of DCL looked**
10 **like in the past?**

11 A. Yes. Attached hereto as Exhibit MJG 1 is an image received from SCDHEC in
12 response to a FOIA request. It is entitled "Oblique Aerial, Beaufort County" and
13 indicates a flight date of Spring 2007. It shows generally the original locations of
14 Driftwood Cottage Lane and is consistent with my understanding of the facts. That
15 area has significantly changed since then.

16 **Q. Perhaps that is a good place to start your testimony. Would you please provide**
17 **the Commission with the background facts you believe might be helpful to the**
18 **determination of this matter?**

19 A. Sure. One of the original developers of Daufuskie Island constructed Driftwood
20 Cottage Lane (DCL) and sold residential real estate lots on the ocean side as well
21 as the island side of DCL. Water and sewer infrastructure were installed in the
22 easements and right-of ways adjacent to the roadways. Over the following decades,
23 purchasers of property on DCL along with the on-island property owners'

1 association (Melrose Property Owners Association) fought to protect DCL from
2 erosion. The battle has been costly endeavor.

3 DIUC's current Chief Operator, Eric Johanson, began employment with the Haig
4 Point Utility in January 1999 and has worked on the island continually since that
5 time. During his earliest years of employment, he would often assist Melrose
6 Utility Co. with various operations and became familiar with the erosion of DCL.
7 The costly and ultimately losing battling against the eroding effects of the Atlantic
8 Ocean continued, and providing DCL's seaward lots with water and sewer service
9 remained a constant challenge. Preserving the infrastructure was difficult give the
10 erosion and safety was a concern, particularly with regard to sewer structures in the
11 area.

12 In 2011 DCL was relocated to the area behind the residences at 29 and 33 DCL.
13 Utility infrastructure was reinstalled (at the Utility's expense). As the entity
14 responsible for maintain the roadway, MPOA paid for the relocation of DCL.

15 Between 2011 and 2015, 29 DCL and the land beneath and around both 29 DCL
16 and 33 DCL eroded to the point that the homes were abandoned. At the time of
17 abandonment both these locations had lost significant ground to the erosion and
18 had lost both the utility mains and customer service lines that provided water and
19 sewer services to the homes. Current photos of the area are included in DIUC's
20 Answer. *See* DIUC Answer, 12-17-2018, at pp.3 to 6. At no time during those
21 years did the customers at 29 DCL and 33 DCL ask or expect DIUC to provide
22 erosion control and/or protection from erosion to prevent the abandonment of these
23 properties. Even after relocating DCL, the MPOA continued to attempt to preserve

1 the road. In the spring of 2015, the MPOA obtained a Department of Health and
2 Environmental Control (DHEC) Ocean and Coastal Resource Management
3 (OCRM) permit to construct approved protective devices, which consisted of
4 sandbags and backfill to protect the road. The MPOA spent over \$60,000.00 to do
5 so. Despite these costly protective devices, the erosion destroyed the road causing
6 the abandonment of 29 and 33 DCL. See Email, December 19, 2016, from Julie
7 DiIullo, MPOA President, to Mike Guastella, Produced with DIUC's Response to
8 Complainants' First Set of Discovery at DIUC 0140.

9 In the months leading up to October of 2015, the DCL roadway and its residential
10 lots continued eroding, especially during high tides. Significant portions of the land
11 were destroyed in October 2015 when historic rain storms and Hurricane Joaquin
12 battered the Island. South Carolina's Governor and President Obama declared a
13 National Emergency for South Carolina.

14 DIUC had been monitoring the water and sewer facilities serving the remaining two
15 residences on DCL (Halwig and Noller). During this time DIUC was especially
16 concerned about safety. Among other things, DIUC was obligated to prevent any
17 extraordinary inflow of ocean water into its sewer system because that could affect
18 the treatment process of collected wastewater. The lots on DCL presented a real
19 danger for the inflow of ocean water due to the constant assault of the tides, wind,
20 and erosion. Also, DIUC remained concerned about any possible loss of pressure
21 due to damage of its water distribution system because of erosion by ocean. Losing
22 water pressure was a risk to DIUC's ability to provide safe and adequate service to
23 all its customers.

1 In the last days of October 2015, Eric Johanson attended a rate case hearing before
2 the SC Public Service Commission (PSC). However, immediately after providing
3 his testimony Mr. Johnson had to be excused from the rate case hearing “to return
4 to the island to address some emergency issues.” *See* Docket 2014-346-WS,
5 Hearing Transcript page 112, lines 10-14. DIUC’s facilities had suffered extensive
6 damage from the severe rain event, high tides, wave action, and erosion. The
7 facilities and service at DCL had been rendered unsafe. Continuing to provide
8 service presented hazardous and dangerous conditions. In accordance with
9 applicable laws, including S.C. Reg. § 103-535, service was discontinued to 36 and
10 46 DCL, the residences owned by the Complainants Halwig and Noller. DIUC
11 notified the customers, and regulatory agencies then proceeded to attempt to
12 arrange for repairs. Ultimately, Terry Lee Contracting installed bell restraints
13 around the seams of the exposed portion of the 8” water main. Photographs of these
14 repairs are included with DIUC’s Response to Complainants' First Set of Discovery
15 at DIUC 0137. These repairs enabled DIUC to continue providing water and
16 sewer services to the customers, without jeopardizing the rest of the water and
17 sewer system.

18 During October 2015, DIUC received its first communications from the
19 Complainant Halwig regarding 46 DCL. On October 14, 2015, Mr. Halwig
20 contacted DIUC through its website stating:

21 The water and sewer pipes continue to erode behind the houses on
22 Driftwood Cottage. There needs to be an immediate plan to protect
23 those pipes. From my understanding there is an emergency order
24 that the Melrose POA obtained to create a temporary road for
25 emergency access which has now washed away. That allowed for
26 large sandbags to be placed. I am suggesting in addition to whatever

1 plans you already have is to contact Tim Whitaker [...] who did the
2 work. He should be able to bring in those bags ASAP. He would
3 need to put down some sand to cross over to place them. I have
4 instructed my lawyer Rene Jose of Turner Padgett to begin
5 proceedings to compel the water company to run water and sewer to
6 our property across the golf course from the homes on Martinagel
7 that have service if the service across Driftwood is lost.
8

9 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
10 Information Request at DIUC 0009 to 0010.

11 Mr. Halwig essentially demanded that DIUC install erosion control devices (like
12 those that cost the MPOA \$60,000) and then to relocate the water and sewer lines
13 to DLC. DIUC responded that "Though South Carolina is currently under a state
14 of emergency we are doing everything in our means to continue service to your
15 water and sewer laterals." *See* DIUC's Responses to Office of Regulatory
16 Staff's First and Continuing Audit Information Request at DIUC 0009 to 0010.

17 DIUC further explained, "We are continuing to provide uninterrupted service to all
18 customers in the Driftwood area. Our operators are monitoring the service main
19 daily and are working with outside contractors to protect the system." *See* DIUC's
20 Responses to Office of Regulatory Staff's First and Continuing Audit Information
21 Request at DIUC 0009 to 0010.

22 In sum, in 2015 while service was being provided, Mr. Halwig was asserting DIUC
23 should install new lines for a second time to DCL and that DIUC should be
24 providing the erosion control devices for the road that the MPOA was no longer
25 providing.

26 At this same time Mrs. Halwig was also concerned about the fact that there was no
27 reliable access to DCL. She explained in an October 10, 2015, email to Ken Crow:

As we discussed this situation has been a multi year problem exacerbated by the each spring and fall high tides. We have repeatedly asked Pelorus and the Arnolds to maintain and to repair their portions of the seawall. Unfortunately neither party has for whatever reason been able to fulfill their obligations to maintain their properties which has resulted in numerous blowouts and ultimately major erosion of their properties. Their neglect has impacted us with significant ongoing water damage and a need for us to battle erosion of our property.

[...]

[T]he area south of the seawall has been completely degraded extinguishing the paved access road, the lots, the temporary access road and now the sewer and water pipes are exposed and are imperiled.

As a result we are now landlocked by the golf course and logs which were placed in front of our properties and the roadway along the Noller properties.

We request a temporary easement for delivery of essential services and for access to our home across the golf course between the 16th green and the 17th tee box. We need a road that is solid enough to hold the weight of routine service vehicles such as propane delivery, garbage pick up and yard maintenance. It also must be wide enough for a fire truck, an ambulance, and equipment to repair the seawall and replace sand. We realize the need for a roadway that is attractive and suggest crushed oyster shells over a roadbed of packed sand or however such roads are constructed. Haig Point has several of these type of roadways along their waterfront.

We would be willing to agree to cross the golf course at our own peril and when crossing with a motorized vehicles to use only the easement road. Our rental guests would be told and required to sign a waiver of liability to both the course and to us for the peril of crossing the course. We would tell them they will face fines and actions against them by course management for failure to stay on the easement road. We will require rental guests to sign and acknowledge the rules, waive liability and to be made aware of fines.

See DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit Information Request at DIUC 0001 to 0002,

In November 2015, DIUC received a letter from Rene Josey of Turner Padgett Law Firm, dated November 10, 2015, who wrote on behalf of the Complainants. *See*

1 Exhibit MJG-2. After receipt of this letter, DIUC had communications with
2 members of the Office of Regulatory Staff (ORS), our (DIUC) wastewater
3 compliance inspector with DHEC, Penny Cornett, and phone conversations with
4 Ken Crow. In these communications various aspects of the erosion situation and
5 its impact on water and sewer mains were discussed. DIUC was attempting to find
6 a resolution that it could complete within the limitations imposed upon it by law,
7 cost, and feasibility. Following these communications DIUC provided a letter to
8 Rene Josey, dated December 10, 2015, explaining DIUC's position, based on all
9 the input provided. *See* DIUC's Responses to Office of Regulatory Staff's First and
10 Continuing Audit Information Request at DIUC 0019.

11 Neither the Complainants nor Rene Josey responded to the letter. Throughout
12 2016, DIUC continued to provide service to the Complainants at 36 and 46 DCL.
13 Then, on October 7, 2016, the initial outer bands of Hurricane Matthew began
14 making landfall in South Carolina, the heaviest and most hard-hitting effects of the
15 storm occurred through October 8 and had passed further north by October 9, 2016.
16 In the days leading up to Hurricane Matthew, DIUC prepared its utility system
17 according to its emergency guidelines. On October 9, 2016, Eric Johanson gained
18 access to Daufuskie Island with an emergency pass and met with another DIUC
19 operator, Kevin Fitzpatrick. Mr. Fitzpatrick is a permanent resident of Daufuskie
20 Island and he had remained on the island during Hurricane Matthew. Both Eric and
21 Kevin began a full system inspection and site evaluation for damage due to the
22 storm. While in communication with emergency services and completing their
23 initial systematic evaluations, it was determined that there was a water main break

1 in the distribution system. Suspecting the break to be at DCL, both operators
2 immediately made their way to DCL on foot. There were downed trees and
3 powerlines and other various debris prevented use of vehicle. At DCL they
4 discovered that a large portion of the beach and an even larger portion of DCL was
5 gone. As a result, even more of the previously reinforced 8" water main was
6 exposed.

7 Inspection revealed that the portion of the main reinforced in 2015 had withstood
8 the storm, but the water main formerly protected under the road (but now exposed)
9 had failed. The operators isolated a small section of water main by closing a valve
10 near the residence at 20 DCL. This remedial measure shut off services to three
11 properties on DCL -- 22, 36 and 46. This action was conducted pursuant to
12 applicable laws and regulations, including S.C. Reg. § 103-535.

13 Following my arrival on Daufuskie Island, I worked with DIUC operators,
14 emergency crews and volunteers. The amount of overall damage to the island was
15 extensive. During our evaluation and emergency response efforts, which ended up
16 lasting weeks, the immediate and primary concern was keeping any and all
17 wastewater below ground so as to prevent hazardous and dangerous conditions.

18 **Q. Did DIUC at this point in time determine that providing sewer service to the**
19 **Complainants' properties would be hazardous or dangerous?**

20 A. Yes.

21 **Q. And is that why service was not provided again after late 2016?**

22 A. Yes.

1 **Q. What regulation does DIUC rely upon for denying service based upon its**
2 **conclusion that to do so would be hazardous or dangerous?**

3 A. S.C. Reg. § 103-535 states that “Service may be refused or discontinued ...
4 [w]ithout notice in the event of a condition determined by the utility, the
5 commission by order, or the South Carolina Department of Health and
6 Environmental Control to be hazardous or dangerous.”

7 **Q. What happened after Hurricane Matthew?**

8 A. In the weeks following Hurricane Matthew, DIUC spoke with Terry Lee
9 Contracting about the feasibility of conducting another repair to the damaged 8”
10 water main. Simultaneously, our operators were looking into repairs necessary to
11 the force main. It quickly became apparent, as I noted in a November 14, 2016,
12 email communication with Chad Campbell of ORS, “Unless the road and
13 surrounding area is restored and adequately protected from any future erosion, it
14 would not be possible to reinstall the main at that location.” *See* DIUC’s Responses
15 to Office of Regulatory Staff’s First and Continuing Audit Information Request at
16 DIUC 0020.

17 **Q. Did MPOA again rebuild the road and surrounding area after Hurricane**
18 **Matthew in late 2016?**

19 A. No. The then-president of MPOA explained the decision in an email stating:

20 The Melrose POA has made extensive efforts to protect and repair
21 Driftwood Cottage Lane. Unfortunately the Atlantic Ocean has
22 proved to be a force we cannot compete with. At this time, most of
23 the road right of way and easement owned by the MPOA no longer
24 exists – it is under water. The MPOA has utilized every reasonable
25 option available to protect Driftwood Lane, but those options are
26 limited by what the Ocean Coastal Resources Management agency
27 will allow. The only temporary protective devices allowed by

1 ORCM are sandbags and sand backfill. After finally receiving an
2 Emergency Permit for road protection, in the spring of 2015 we
3 spent over \$60,000. installing heavy duty Geo sandbags and
4 dumping tons of sand backfill to protect the road. The king tides of
5 October 2015 washed most of that away and successive storms have
6 completed the destruction and caused even further erosion. The
7 MPOA cannot reconstruct or protect Driftwood Cottage Lane
8 because it is not allowed to use the materials necessary to ensure any
9 permanence to the effort.

10
11 See Email, December 19, 2016, from Julie DiIullo, MPOA President, to Michael
12 Guastella, Produced with DIUC's Response to Complainants' First Set of
13 Discovery at DIUC 0140.

14 **Q. Without a roadway and erosion protection on DCL, could DIUC install new**
15 **infrastructure to service 36 and 46 DCL?**

16 A. No. There was no easement, it had been washed away. The only way to connect
17 service to the Noller and Halwig houses would be to obtain a new utility easement
18 in an area that could be adequately protected from erosion or other threats. After
19 that, infrastructure would need to be designed and rebuilt; this would be a costly
20 endeavor to benefit only two ratepayers whose service use was likely to be very
21 short term. As noted in the prefiled testimony of John Guastella, it was not
22 appropriate for DIUC to incur those costs for the benefit of two ratepayers. The
23 homes at issue lack any significant protection from erosion and equipment installed
24 would likely not last very long at all before again being destroyed by erosion.

25 **Q. Did you discuss this situation with anyone from ORS?**

26 A. Yes.

27 **Q. Why did you do that?**

1 A. Two reasons. First, Mr. Halwig filed a complaint with ORS in December of 2016
2 and ORS contacted me about DIUC's response. Second, as a regulated utility, we
3 seek ORS for guidance in unique circumstances such as these. The properties at
4 issue are not at all like other properties and the situation is one that requires DIUC
5 to balance many different obligations. I wanted to proceed in the best way possible
6 and I wanted to proceed with the in accordance with ORS's understanding so that
7 DIUC would be in compliance with all regulatory requirements.

8 **Q. Can you discuss the history of your communications with ORS regarding this**
9 **matter?**

10 A. Yes. Following Hurricane Matthew in October 2016, DIUC consulted with staff at
11 ORS regarding DIUC's provision of water and sewer services to the Complainants'
12 properties. I participated in multiple telephone calls and exchanged emails with
13 members of ORS staff. Of course, not all calls were specifically documented by
14 DIUC and not all conversations between DIUC and ORS on this matter were
15 followed my emails referencing the same. Select communications are discussed
16 below and copies of relevant emails were produced *with* DIUC's Responses
17 to Office of Regulatory Staff's First and Continuing Audit Information Request
18 bearing Bates Numbers DIUC 0001 to DIUC 0091.

19 **Q. How would you characterize your interactions with ORS regarding this**
20 **situation?**

21 A. I have always found the members of ORS to be helpful and I believe we have a
22 mutual respect for each other and a cordial working relationship. DIUC and ORS
23 approached the situation cooperatively and freely exchanged information in an

1 effort to address the unique circumstances involved. For example, in a November
2 14, 2016, email from myself to ORS's Chad Campbell with copy to ORS staff
3 members Dawn Hipp, Sarah Johnson, April Sharpe, and Willie Morgan, I explained
4 the circumstances and DIUC's position:

5 Due to the hurricane, the main break was caused by a wash out of the
6 road and surrounding immediate area under which the main was
7 located. Unless the road and surrounding area is restored and
8 adequately protected from any future erosion, it would not be possible
9 to reinstall the main at that location. Clearly, the utility is not
10 responsible for road and land recovery under the circumstances. We
11 have been looking into other means of access to the Halwig property,
12 but do not yet know the options in term of ownership of other property
13 or availability of rights of way, and of equal significance who would
14 pay for the cost. It seems that it is Mr. Halwig's responsibility to
15 provide reasonable access, which may require a restoration effort by
16 appropriate municipal authorities. In the meantime, we are also trying
17 to find answers to these questions. Attached for your information are
18 notices of restrictions regarding occupying the properties posted on
19 Mr. Halwig's and his neighbor's properties. This is a more complex
20 problem than simply repairing or replacing a small section of main.
21 We have had communications with Mr. Halwig explaining the
22 circumstances and an inability to provide an estimate of restoration. It
23 is still impossible to provide specific dates when the road and ground
24 restoration that may be necessary, and which would not be the utility's
25 responsibility, must be completed before we can reinstall a main - or
26 find other means of access to Mr. Halwig's property.
27

28 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
29 Information Request at DIUC 0020. DIUC's position was based upon the
30 conclusion that it would not have been a prudent decision for DIUC to voluntarily
31 install lines to these two rapidly eroding properties and then attempt in its next rate
32 proceeding to make all the other DIUC ratepayers absorb the cost. This is in
33 addition to the fact that providing service under these circumstances would not be
34 safe.

35 **Q. What safety concerns were there?**

1 A. Many of the same risks I outlined for the situation as it existed in 2015 were again
2 present after Hurricane Matthew. DIUC was obligated to prevent any extraordinary
3 inflow of ocean water into its sewer system because that could affect the treatment
4 process of collected wastewater. The lots on DCL presented a real danger for the
5 inflow of ocean water due to the constant assault of the tides, wind, and erosion.
6 Also, DIUC was concerned about any possible loss of pressure due to damage of
7 its water distribution system because of erosion by ocean. Losing water pressure
8 was a risk to DIUC's ability to provide safe and adequate service to all its
9 customers. The lift station located just outside the 46 DCL property, as shown on
10 the attached Exhibit MJG-3, posed a risk of electrocution during high tides. The
11 risk of a high tides damaging the lift station's control panels with water and/or
12 debris threatened a spill event involving the discharge of sewage into the ocean.
13 These dangers had to be avoided. In order to protect the environment, DIUC
14 personnel, as well as DIUC's other customers.

15 **Q. Can you explain briefly the document you have submitted as Exhibit MJG-3?**

16 A. Yes. It is a map I downloaded from the Beaufort County GIS system. I have also
17 added information about the location of mains, including former mains and other
18 equipment.

19 **Q. Did anyone from ORS ever tell you that DIUC was handling the situation with**
20 **the Complainants improperly?**

21 A. No. As noted by the additional November 2016 emails attached to *See* DIUC's
22 Responses to Office of Regulatory Staff's First and Continuing Audit Information
23 Request, I communicated further with Chad Campbell and Willie Morgan

1 regarding the matter. At no time in any of the telephone conversations or email
2 exchanges did any ORS staff member state or suggest that DIUC was obligated to
3 purchase additional easements to install for a third time infrastructure to serve the
4 Complainants.

5 **Q. Did you have additional conversations with ORS about the matter?**

6 A. Yes. On December 1, 2016, ORS staff members Dawn Hipp, Willie Morgan, and
7 Chad Campbell joined me in a conference call to discuss the situation impacting
8 the Halwigs and Nollers. Ms. Hipp encouraged those on the call to “think outside
9 the box” in an effort to be creative in finding a solution that would work for the
10 property owners, without subjecting DIUC or its ratepayers to excessive costs.
11 During that call, ORS encouraged DIUC to perhaps suggest a contractor and/or
12 engineering firm to potentially assist the Halwigs and Nollers. In Mr. Campbell’s
13 December 1, 2016 email summarizing the call earlier that day, Mr. Campbell did
14 not in any way indicate DIUC was obligated to purchase additional easements to
15 install for a third time infrastructure to serve these two customers. *See* DIUC’s
16 Responses to Office of Regulatory Staff’s First and Continuing Audit Information
17 Request at DIUC 0035 to 0036.

18 **Q. Did ORS ever distribute a written document regarding this matter?**

19 A. Yes. ORS generated a December 2, 2016, letter responding to Dr. Halwig’s 2016
20 complaint. ORS did not indicate in any way in that letter that DIUC was obligated
21 to purchase additional easements to install for a third time infrastructure to serve
22 the Complainants. That letter was signed by Mr. Campbell and indicates copies
23 were provided to Dawn Hipp, Sarah Johnson, Willie Morgan, and April Sharpe.

1 **Q. Did you have any further discussions with ORS regarding DIUC's actions in**
2 **response to the 2016 complaint?**

3 A. Yes. On December 14, 2016, the South Carolina Supreme Court heard oral
4 arguments in DIUC's appeal of its most recent rate case order. I was present, as was
5 Dawn Hipp. After the oral argument Ms. Hipp and I discussed the Halwig-Noller
6 situation. I updated Ms. Hipp regarding DIUC's efforts and my scheduled meeting
7 the following day with OCRM regarding the Halwig and Noller properties. Ms.
8 Hipp indicated DIUC was more than meeting all its obligations in the situation.

9 **Q. Do you recall other communications about the 2016 complaint?**

10 A. Yes. I also recall telephone conversations with ORS regarding the 2016 complaint
11 and its allegations. One of these telephone calls occurred on January 23, 2017, with
12 myself, Mr. Campbell, and Mr. Morgan. During that call the gentlemen discussed
13 the document provided by Mr. Halwig and labelled "B-1". I explained that DIUC
14 did not prepare that document and that DIUC could not agree with it because it
15 stated that DIUC would be "responsible for obtaining the necessary permits, the
16 necessary surveys and the necessary paperwork to create the new utility easement.
17 They will also be responsible for all construction costs and will return the
18 construction area across the course to its prior state." I again made clear DIUC's
19 position that it could not agree to subject its other ratepayers to covering the costs
20 of a third installation to serve the Complainants, especially given the ongoing and
21 rapid erosion at the properties. The January 23, 2017, call is also referenced in an
22 email from Mr. Campbell to me dated January 24, 2017.

1 **Q. During this January 23, 2017, call did Mr. Campbell or Mr. Morgan ever**
2 **suggest that DIUC was obligated to purchase additional easements to install**
3 **for a third time infrastructure to serve these two customers?**

4 A. No.

5 **Q. Did you later update ORS on the situation?**

6 A. Yes. By email dated March 21, 2017, I reported to Mr. Campbell that the Halwigs
7 and Nollers were proceeding with installation of additional equipment in a new
8 easement, at the landowners' cost, as previously discussed between myself, Mr.
9 Campbell, and Mr. Morgan:

10 A quick update on the Driftwood/Halwig situation. I heard from
11 Thomas & Hutton again and it sounds as though they will be
12 working with both residents (Halwig & Noller) to provide the
13 engineering reports for new customer service lines. They will be
14 inspecting the area possibly as soon as this week. Our Operators will
15 be with the engineer to answer any questions and show them our
16 facilities. I will update you again when I have new information.

17
18 *See* DIUC's Responses to Office of Regulatory Staff's First and Continuing Audit
19 Information Request at DIUC 0057.

20 **Q. Did Mr. Campbell respond to that email?**

21 A. Yes. Mr. Campbell responded, "Thanks for the update Mike." I would also note
22 that like the previous correspondence from ORS, this email from Mr. Campbell
23 does not indicate in any way that ORS disagreed with the construction as it was
24 proceeding, at the landowners' expense. *See* DIUC's Responses to Office of
25 Regulatory Staff's First and Continuing Audit Information Request at DIUC 0057.

26 **Q. During this period of 2017 did the Complainants begin construction?**

1 A. Yes. But first the planning and engineering was necessary. DHEC and other
2 approvals were also required.

3 **Q. Did DIUC cooperate with the Complainants during this period?**

4 A. Yes. I was in communication with their engineer, Fred Sororian, throughout the
5 design and construction of the new main installation, assisting when possible and
6 providing information as needed to ensure the new facilities would be adequate.
7 On February 1, 2017, I had communications with Fred Soroian of Thomas & Hutton
8 Engineering firm, regarding the fact that the Customer(s) contacted them to begin
9 plans to install new mains. I provided Mr. Sororian with pictures and letters to
10 assist him with understanding the situation in this area and help speed the process
11 for the customers. I remained in contact with Mr. Sororian by means of emails and
12 phone calls, and construction began on or around November of 2017.

13 **Q. Did the project run smoothly?**

14 A. As far as I know construction proceeded until the bankruptcy of the golf course
15 stalled everything, but that had nothing to do with DIUC.

16 **Q. Please explain?**

17 A. When the golf courses was sold in bankruptcy, the new owner halted the
18 Complainants' construction until the new owner was satisfied all necessary
19 easements and related matters were prepared.

20 **Q. Did DIUC counsel participate in the process of negotiating the easement?**

21 A. Yes. Our counsel was involved to the extent that DIUC would need an easement
22 of the new equipment for maintenance and repair. DIUC had to be sure it would
23 be in a proper position to take ownership of the infrastructure after construction.

1 **Q. Did DIUC and the Complainants enter into a written Customer Service**
2 **Agreement regarding the new infrastructure to be installed to service 36 and**
3 **46 DCL?**

4 A. Yes. The agreement is the Customer Service Agreement (“CSA”). *See* DIUC’s
5 Responses to Office of Regulatory Staff’s First and Continuing Audit Information
6 Request at DIUC 0070 to 0071.

7 **Q. Did you provide a copy of the CSA to ORS?**

8 A. Yes. On September 25, 2018, Chad Campbell of ORS emailed me seeking a
9 response to an inquiry received by ORS from Attorney Jack Smith on behalf of the
10 Halwigs and Nollers. Mr. Campbell described the inquiry as “regarding costs
11 associated with restoral of water and sewer services to their properties on Driftwood
12 Cottage Lane, Daufuskie Island, S.C.” Mr. Campbell requested that DIUC
13 “provide a response to the ORS on or before October 2, 2018. In your response,
14 please advise what responsibilities have been conveyed to the Halwig's and Noller's
15 with regard to the restoral of water and sewer services to their properties.” I
16 provided the CSA along with DIUC’s response.

17 **Q. How did DIUC respond to Mr. Campbell’s request?**

18 A. Via email dated October 1, 2018, I responded by email with attachments:

19 I've attached a copy of the executed 'Customer Service Agreement',
20 that was sent on 1.31.18, in which you and Willie were both copied.
21 Also included is the email correspondence between myself and Jack
22 Smith leading up to the customers' agreeing to the terms of the
23 'Customer Service Agreement'.
24

25 *See* DIUC’s Responses to Office of Regulatory Staff’s First and Continuing Audit
26 Information Request at DIUC 0072 to 0073.

1 **Q. Did you also discuss the CSA with Mr. Campbell?**

2 A. Yes. Mr. Campbell and I discussed the CSA via telephone on October 3, 2018.
3 Mr. Campbell then requested by email that same day that I provide my previous
4 “response to the ORS on Company letterhead.” I provided that response on October
5 4, 2018. *See* DIUC’s Responses to Office of Regulatory Staff’s First and
6 Continuing Audit Information Request at DIUC 0072 to 0076.

7 **Q. Did you at any other time provide ORS with a copy of the CSA?**

8 A. Yes, as indicated in the January 31, 2018, email from me to Thomas & Hutton
9 engineer Fred Sororian, on behalf of DIUC I provided ORS staff members Chad
10 Campbell and Willie Morgan with a copy of the Customer Service Agreement
11 (“CSA”). *See* DIUC’s Responses to Office of Regulatory Staff’s First and
12 Continuing Audit Information Request at DIUC 0058.

13 **Q. Did you receive any response to this email from Mr. Campbell or Mr. Morgan?**

14 A. No.

15 **Q. Did you ever discuss with ORS whether the CSA required any formal**
16 **Commission approval?**

17 A. Yes. In early September of 2018, I spoke by telephone with Mr. Morgan regarding
18 the CSA and whether or not any further ORS or Commission approval of the CSA
19 was required. I was concerned that the Complainants’ new threats not to pay the
20 CIAC taxes per the CSA could arguably create a potential impact on DIUC
21 triggering the approval requirements of SC Regs. § 103-743 and § 103-541.

22 **Q. Did you ask Mr. Morgan for his guidance on behalf of ORS?**

23 A. Yes, I did.

1 **Q. What did Mr. Morgan advise you?**

2 A. He advised me that Commission approval of the CSA was not necessary.

3 **Q. What was the purpose of the CSA?**

4 A. Pursuant to the CSA, the Customers would construct infrastructure that upon
5 approval by DIUC could become part of the DIUC system allowing DIUC to serve
6 the Customers. Some of the installed items would be on the Customer's property
7 and would remain under the Customers' ownership and care.

8 **Q. What costs was DIUC to contribute?**

9 A. None.

10 **Q. Does DIUC rely on any particular provisions for that position?**

11 A. Yes. The CSA contains the following relevant provisions:

12 1. In order to protect other customers from sharing in the cost
13 responsibility, it would be the responsibility of the affected
14 Customers to have the Project Mains installed.

15 [...]

16 5. Upon Completion of the Project Main, Customers will provide
17 DIUC with an acknowledged bill of sale transferring them to DIUC,
18 and they shall be and remain the property of DIUC and its heirs and
19 successors, and will be treated as contributed for rate setting
20 purposes.
21

22 **Q. What happens when equipment is treated as contributed to a utility?**

23 A. When a utility treats items "as contributed for rate setting purposes," the utility
24 incurs taxes.
25

26 **Q. Can you elaborate on the tax issue?**

27 A. Yes. Pursuant to the Tax Cuts and Jobs Act ("Tax Act"), DIUC will be required
28 to pay taxes for the contributions in aid of construction related to the Customers'
29 contributions to the DIUC system. The Tax Act was in effect when the CSA was

1 executed on January 30, 2018. John F. Guastella addresses this issue in his
2 testimony.

3 **Q. Did the Complainants ultimately construct facilities?**

4 A. Yes.

5 **Q. What happened after that?**

6 A. DIUC's counsel assembled all the paperwork related to the CSA and that
7 paperwork required to complete the transaction according to the CSA's terms then
8 provided them to the Complainants' lawyer. I understand from reviewing the
9 Complaint that the title of the document as "Addendum" seems to be of some issue.
10 But, as DIUC's Answer points out, that was not the purpose of the document, as
11 explained by correspondence from DIUC counsel. *See* DIUC Answer, 12-17-2018,
12 at Exhibit A.

13 **Q. Was the Addendum intended to change the agreement with the Plaintiffs?**

14 A. No. it was just to resolve everything and to include all the necessary receipts and
15 paperwork for future reference.

16 **Q. The Complainants have asserted that DIUC improperly withheld service in
17 late 2018. How does DIUC respond to that allegation?**

18 A. The Complainants made it clear that they did not intend to abide by the terms of the
19 CSA. In doing so they breached the contract (the CSA). Pursuant to S.C. Reg. §
20 535 and § 735 a utility may withhold service when a customer fails to fulfill his
21 contractual obligations for service.

22 **Q. What is your understanding of the costs involved in the project as of that
23 time?**

1 A. The Complainants have provided invoices as follows:

2	PINCO	\$ 69,337.72
3	Thomas and Hutton	\$ 39,346.35
4	Joe Davis	\$ 2,650.00
5	Sea Island Land Survey	\$ 1,300.00
6	SC DHEC	\$ 250.00
7	Transportation Costs	<u>\$ 70.00</u>
8		\$ 112,954.07

9 **Q. What other costs did DIUC assert were to be paid by the Plaintiffs?**

10 A. Attorneys' fees in the amount of \$3,900 for costs incurred by DIUC up to that point.

11 Also, the CSA obligates the Complainants to pay taxes, which we calculated as
12 follows:

13	Amount	\$ 112,954.07
14	Tax Rate	<u>33.24%</u>
15	Tax Due	\$ 37,545.93

16 **Q. Did DICU provide all this information to the Complainants?**

17 A. Yes. DIUC provided the Customers with a statement from its legal counsel
18 indicating that DIUC has incurred legal costs of \$3,900.00 related to the matters
19 contained in the CSA. The legal fees are a cost to DIUC as part of the CSA and
20 DIUC does not believe it would be equitable to pass that cost on to its other
21 customers.

22 **Q. What is the total amount the Plaintiffs should pay DIUC pursuant to the CSA?**

23 A. Based upon the terms of the CSA and all the information available to date, the

1 Customers are obligated to pay the tax obligation of \$37,545.93, which is equal to
2 33.24% of \$112,954.07, that DIUC must pay in taxes, plus reimbursement for
3 DIUC legal fees in the amount of \$3,900. In addition, DIUC seeks to recover the
4 additional costs it has incurred to litigate the current proceeding. Those costs are
5 outlined in the testimony of John F. Guastella.

6 **Q. Why did DIUC enter into the CSA with the Complainants?**

7 A. DIUC does not believe it would be equitable to have its other ratepayers to
8 subsidize the costs attributable solely to the installation of the Project Mains for the
9 Customers. To ensure its collection of these costs and to prevent DIUC's other
10 customers from bearing the burden of the same, DIUC entered into the CSA.

11 **Q. Does that conclude your testimony at this time?**

12 A. Yes.



Oblique Aerials

Images courtesy of: Microsoft® Virtual Earth™ 2006

Flight Date: Spring of 2007



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<http://oldweb.bcgov.net/GIS/birdseye/birdseye.htm?title=Beaufort%20County&logo=Beau...> 11/3/2010

Exhibit MJG-1

Turner | Padget

REPLY TO:

J. René Josey

E-Mail: RJosey@TurnerPadget.com
 Writer's Direct Dial: (843) 656-4451
 Writer's Direct Fax: (843) 413-5818

November 10, 2015

VIA E-MAIL ONLY

Ms. Carolyn Carleton
 Daufuskie Island Utility

Re: 46 Driftwood Cottage Lane
 TPGL File No.: 13826.101

Dear Ms. Carleton:

This firm represents Michael and Nancy Halwig with regard to their property located at the above-referenced address.

As you know, the Halwig's home as well as the home of their neighbors to the South (the Noller's) are in the unfortunate position of having the designed and planned roadway to their homes eroded beyond use. Accordingly, I have been working with Ken Crow of Century Golf in an effort to find a cooperative solution that would provide access to these homes so that they might be protected and used. Of course, water and sewer service is a critical part of the ability to use any home. We appreciate the efforts that the utility company has made in keeping the water and sewer service to these homes in working order.

The Halwig's are understandably worried about the property and all aspects related to their property -- including utility service. While all parties are working on a long term solution, there may be an acute need for an alternative route for water and sewer service for to these homes -- before a long term road and erosion solution is achieved. Mr. Crow is trying to work with us in fashioning an acceptable on-the-ground access solution until any alternative long term corrections are made; it may be that alternative water and sewer lines can be placed under this temporary path with minimal disruption to the golf course.

It certainly would be reassuring to know that the utility company is doing what it can to participate in the cooperative effort to serve their customers and preserve these important investments. If I can help encourage that effort in any way, please let me know. I will be happy to speak with you or any other appropriate person at the utility as you direct. I am sure Ken Crow (910-639-4008) who I am copying with this letter will be willing to do so as well.

Sincerely,

TURNER PADGET GRAHAM & LANEY P.A.

J. René Josey

JRJ:vlb

Cc: Ken Crow
 Michael and Nancy Halwig (via e-mail only)
 Terry R. Lee, Registered Agent

TURNER PADGET GRAHAM & LANEY P.A.
 Columbia | Charleston | Greenville | Florence | Myrtle Beach

www.turnerpadget.com P 843-662-9008 F 843-667-0828
 319 South Irby St. (29501) | P.O. Box 5478, Florence, SC 29502
 Complainants 00018

Exhibit MJG-2

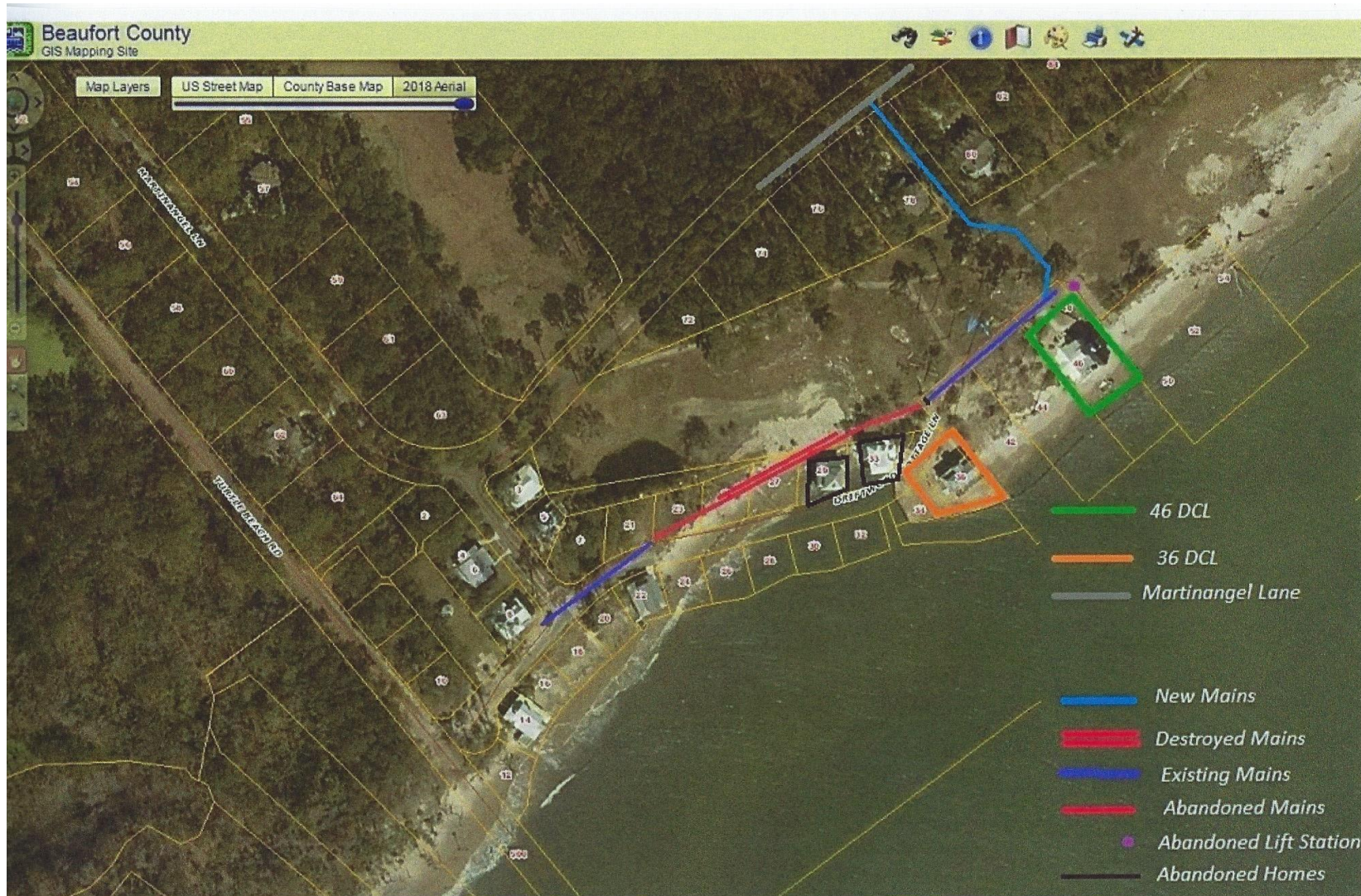


Exhibit MJG-3